EXHIBIT 1
(DECLARATION OF KENNETH L. WILSON)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of **Qwest Communications International Inc., Consolidated Application For Authority To Provide In-Region, InterLATA Services In The States Of New Mexico, Oregon, and South Dakota**	)	WC Docket No. 03-11

DECLARATION OF KENNETH L. WILSON

1. My name is Kenneth L. Wilson, and I am a senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11th Street, Boulder, Colorado, 80302. I am submitting this affidavit on behalf of AT&T.

2. My education and relevant work experience are as follows. I received a Bachelors of Science in Electrical Engineering from Oklahoma State University in 1972, and I received a Masters of Science in Electrical Engineering in 1974 from the University of Illinois. In addition, I have completed all the course work required to obtain my Ph.D. in Electrical Engineering from the University of Illinois. The course work was completed in 1976. For 15 years before coming to Denver, I worked at Bell Labs in New Jersey in a variety of positions.

From 1980 through 1982, I worked as a member of the network architecture and network planning team at Bell Labs for AT&T's long distance service. From 1983 through 1985, I was a member of the first AT&T Bell Labs cellular terminal design team. From 1986 through 1992, I led a Bell Labs group responsible for network performance planning and assurance for AT&T Business Markets. From 1992 through 1993, I was a team lead on a project to reduce AT&T's capital budget for network infrastructure.

3. From January 1994 through May 1995, I led a team at Bell Labs investigating the various network infrastructure alternatives for entering the local telecommunications market. From 1995 through the spring of 1998, I was the Business Management Director for AT&T in Denver, managing one of the groups responsible for getting AT&T into the local market in Qwest's 14-state territory. In addition, I was also the senior technical manager in Denver working on local network and interconnection planning, OSS interface architectures and the technical aspects of product delivery.

4. As noted above, I am currently a consultant and technical witness with Boulder Telecommunications Consultants, LLC. In this capacity, I have worked with several companies, including AT&T, on all aspects of interconnection, unbundled elements, collocation and resale issues, among other things. My C.V. is attached hereto as Exhibit 1.

I. CHECKLIST ITEM #1: INTERCONNECTION AND COLLOCATION

5. Interconnection is the physical linking of two networks for the mutual exchange of traffic.[1] Qwest is required to provide interconnection at any technically feasible point within its network that is at least equal in quality to that provided by Qwest to itself or others on rates,

[1] 47 C.F.R. § 51.5 (definition of interconnection).

terms and conditions that are just, reasonable and nondiscriminatory. Qwest must also provide interconnection in a manner no less efficient than the way in which it provides comparable function to its own retail operations.[2] Furthermore, the FCC's rules related to the general rate structure of dedicated facilities require that "[t]he costs of dedicated facilities shall be recovered through flat-rated charges," and "[t]he costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users. Costs of shared facilities may be apportioned either through usage-sensitive charges or capacity-based flat-rated charges, if the state commission finds that such rates reasonably reflect the costs imposed by the various users." 47 C.F.R. § 51.507(b) & (c). In addition, the FCC has stated that CLECs may "choose any method of technically feasible interconnection at a particular point on the incumbent LEC's network. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements."[3]

6. Qwest's SGATs fail to comply with these requirements in two respects. In all three states, Qwest forces CLECs to pay an unlawful loop charge ("entrance facility") when purchasing interconnection trunks. And in New Mexico, Qwest denies CLECs appropriate reciprocal compensation arrangements for certain "transiting" traffic.

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[2] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region IntraLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (1999) at ¶ 65 ("*FCC 271 BANY Order*").

[3] *FCC 271 BANY Order* at ¶ 66 (emphasis added).

1. Qwest Forces CLECs To Pay For Both "Entrance Facilities" and "Direct Trunked Transport" When Obtaining Interconnection Trunks.

7. Qwest's SGATs in all three states impose unlawful "entrance facility" charges on CLECs obtaining interconnection trunks from Qwest. These entrance facility charges are anticompetitive and inconsistent with the statute's requirement that the rates for interconnection be nondiscriminatory, just, and reasonable. *See* 47 U.S.C. §§ 251(c)(2), 252(d)(3); *see also* 47 C.F.R. § 51.705. Qwest's EUDIT and UDIT charges for unbundled interoffice transport raise the same issues. *See Qwest 9-State 271 Order* ¶ 364 n.1327.

8. When a CLEC wishes to establish interconnection between its switch and a Qwest switch, Qwest's SGATs deem *any* Qwest-provided transport between the CLEC switch (or other POI) and the nearest Qwest wire center (called the "serving wire center" or SWC) to be an "entrance facility." Qwest's SGATs at § 7.1.2.1 states:

> 7.1.2.1 Qwest-provided Facility. Interconnection may be accomplished through the provision of a DS1 or DS3 entrance facility. An entrance facility extends from the Qwest Serving Wire Center to CLEC's switch location or POI determined by CLEC. Entrance facilities may not extend beyond the area served by the Qwest Serving Wire Center. The rates for entrance facilities are provided in Exhibit A. Qwest's Private Line Transport service is available as an alternative to entrance facilities, when CLEC uses such Private Line Transport service for multiple services. Entrance facilities may be used for Interconnection with Unbundled Network Elements.

9. What this provision means is that whenever a CLEC wishes to establish a connection from its own switch to a Qwest switch using interconnection trunking provided by Qwest, Qwest requires the CLEC to purchase an "entrance facility" from the CLEC switch to the nearest Qwest serving wire center. As Qwest makes clear, "entrance facilities" are "high speed digital loops" and priced as such – *i.e.*, the charges for entrance facilities are flat-rated and *non-*

distance-sensitive.[4] If the CLEC wishes to establish interconnection with a Qwest switch beyond the nearest Qwest switch, Qwest forces the CLEC to purchase both the entrance facility (to the Qwest SWC) and what it calls "direct trunked transport" between Qwest switches (*i.e.*, from the Qwest serving wire center to the desired Qwest switch). Direct Trunked Transport is a flat-rated, distance-sensitive charge. *See* Freeberg Interconnection Dec. at ¶ 18 n.10.

10. Qwest's "entrance facility" charges are unlawful because they fail to reflect the way these costs are incurred. There is no economic or engineering difference whatsoever between the first transport link (between the CLEC's switch and the SWC) and the second link (between Qwest's wire centers), and thus there is no conceivable justification for creating separate "entrance facility" and "direct trunked transport" charges. Indeed, the "entrance facility" concept is a relic of the access world; in that context, entrance facilities are priced like loops and were originally designed to function as subsidy elements. The principal effect of these "entrance facility" charges is dramatically to raise the price of interconnection, because the CLEC switch is often in close proximity to the Qwest "SWC."

11. The CLEC should be able to order cost-based Direct Trunked Transport from the CLEC switch, directly to the Qwest switch at the end of the trunk, whether that switch is a Qwest tandem or a Qwest end office. The Direct Trunked Transport should run continuously, without need for any entrance facilities or other costs. The CLEC should not be required to order an additional entrance facility, which only serves to raise the cost of interconnection. The absurdity of the Qwest position is most evident when the CLEC builds facilities to a meet point between the CLEC switch and the Qwest serving wire center. Since Qwest's charges for the Entrance

[4] SGAT §§ 7.1.2 & 7.1.2.1.

Facility are not distance sensitive, Qwest charges the CLEC the full price for the Entrance Facility even when the CLEC builds half-way, or even most of the way, to the Qwest serving wire center. To comply with its obligations to provide reasonable and nondiscriminatory rates for interconnection, Qwest should make Direct Trunked Transport available from the CLEC switch to the Qwest switch, without the addition of a loop or other "Entrance Facility" charge, and solely on a mileage sensitive basis. These trunks are carrier-to-carrier facilities that permit CLECs to hand off and receive local traffic; they should be priced as such. Qwest should cease treating CLECs as if they were end users or long distance carriers that are required to pay access charges.

12. Although the SGATs state that CLECs may request other technically feasible means of interconnection, which Qwest will consider through the Bona Fide Request process (see SGAT § 7.1.1), this provision has nothing to do with Qwest's classification of facilities between the CLEC switch and the Qwest SWC as "entrance facilities," which Qwest insists on pricing as if the CLEC had ordered a loop. In other words, although CLECs may request other technically feasible physical arrangements for interconnection, Qwest will deem any such request that involves Qwest-provided trunking between the CLEC switch and the nearest Qwest switch to require the provisioning of an "entrance facility," and will bill the CLECs accordingly. The denial of efficient, technically feasible interconnection, based on a sound and economically valid rate design, is unreasonable and discriminatory. 47 U.S.C. §§ 251(c)(2), 252(d)(3); 47 C.F.R. § 51.705.

13. In the Qwest 9-state proceeding, Qwest claimed that "there are economies of scale and scope that reduce the per-trunk cost for trunks between Qwest offices relative to CLEC entrance facilities." *Qwest 9-State 271 Order* ¶ 336. That is incorrect. The trunking between a

CLEC wire center and the nearest Qwest wire center, which Qwest calls the "serving wire center," is identical in type and quantity to the trunking between many, or even most Qwest Central Offices (COs). In particular, CLEC switches in the CLEC wire centers are typically as big or bigger than the average Qwest switches. For example, Qwest recently stated in this very proceeding that 56% (43 out of 77) of its switches in Oregon are smaller than 10,000 lines. *See* Qwest ex parte Letter, filed January 29, 2003. CLECs switches are typically larger than 10,000 lines.[5]

14. Qwest may have a dozen switches in a metropolitan area, but a CLEC will usually have only one (or at most two) to handle the same geographic area (in an attempt to achieve economies of scale in switching comparable to those of Qwest). In addition, Qwest has insisted since the passage of the Act that CLECs must interconnect with Qwest at a single Qwest wire center. As a result, a CLEC's entire volume of interconnection traffic in a metropolitan area is usually concentrated in a single "entrance facility" connected to a single Qwest serving wire center.

15. For these reasons, Qwest and CLECs are exchanging a very large volume of traffic between large switches over these "entrance facilities," and therefore the "economies of scale and scope" for such facilities are comparable to those on transport between Qwest switches.

16. Second, Qwest claims that "it is more likely that additional electronics will be needed for links to competitive LEC offices." *Qwest 9-State 271 Order* ¶ 366. This is also

[5] Indeed, Qwest usually emphasizes the extent to which interconnection traffic has grown over the past five years until now it comprises a substantial percentage of all traffic in most Qwest states.

incorrect. Interconnection facilities between the Qwest serving wire center and the CLEC wire center are exclusively fiber facilities, just like the facilities between Qwest offices. Moreover, as noted above, these facilities frequently carry call volumes comparable on average to call volumes on transport connecting Qwest's wire centers. For these reasons, the electronics necessary for these "entrance facilities" are comparable to those Qwest uses on its own interoffice transport.

17. CLECs have installed their own fiber facilities to many Qwest offices and lease others from Qwest, and these facilities have been in place to most CLEC wire centers for many years. They are permanent facilities that are augmented the same way that transport links between Qwest wire centers are. The terminal equipment at the CLEC wire center and the Qwest wire center is typically fiber add-drop multiplexers, but the same is true of Qwest's interoffice transport. The fiber and the terminal equipment handle interconnection traffic along with private line traffic and access traffic, just as facilities between Qwest wire centers do.

18. Indeed, there is minimal need for multiplexing functions at the Qwest "serving wire centers" connected to CLEC "entrance facilities." Most of the traffic that the CLEC hands off to Qwest at the "serving wire center" is bound for more distant Qwest switches, and therefore Qwest does not need to perform any multiplexing functions. Qwest simply carries the traffic to the more distant Qwest switch, and Qwest uses a multiplexer to "drop off" the traffic there. In this respect, the "entrance facility" is fundamentally different from a fiber loop connecting an end-user premise, such as a large business or a skyscraper, to a Qwest switch. In the loop situation, Qwest would typically break out all such loops at the central office and terminate the traffic on the end office switch in the serving wire center.

19. In short, there is simply no material difference between the "entrance facility" connecting the CLEC switch and the Qwest serving wire center and the other transport facilities in Qwest's local network. Qwest's treatment of the CLEC facilities as if they were loops is not realistic and ignores the fact that these are transport facilities carrying traffic between major switching centers – namely the CLEC central offices.

2. Qwest Denies CLECs Appropriate Reciprocal Compensation Arrangements For Certain Traffic in New Mexico.

20. In New Mexico, Qwest has also recently begun denying CLECs appropriate reciprocal compensation arrangements for certain traffic local "transit" traffic.[6] Qwest has unilaterally imposed such changes without using the change management process, as its interconnection agreements require. Furthermore, this change goes against AT&T's approved Interconnection Agreement in New Mexico.

21. AT&T's interconnection agreement in New Mexico provides that the parties are to apply a "percent local usage" (PLU) factor when determining whether interconnection traffic is local (and thus subject to TELRIC rates) or access traffic (subject to access charges). Qwest, however, has recently begun to treat local traffic that is terminated on a third party's network as "access" traffic, and has unilaterally begun to bill AT&T access rates for such local traffic. In at least one state (Arizona), this has resulted in a dramatic flip in the PLU factor from a roughly 60%/40% split between local and toll traffic to 10%/90%.

22. Qwest's actions cannot be justified under the interconnection agreement or the law. There is no dispute that the calls at issue are purely local calls, and therefore such traffic

[6] Qwest has also adopted the same sudden shift in position in other states in its region that are not the subject of the instant application, including Arizona, Idaho, Montana, and Utah.

should be governed by Section 251(b)(5) of the Act and the Commission's reciprocal compensation rules that require TELRIC rates. Because these are indisputably local calls, Qwest is required to charge TELRIC rates for this traffic whether the calls terminate on Qwest's network or another carrier's.

23. The only basis Qwest has cited for its sudden change of practice is the last sentence of Section 17.1 of its interconnection agreement with AT&T, which states that "[a]bsent a separately negotiated agreement to the contrary, compensation for local reciprocal traffic exchange applies solely to traffic exchanged directly between the Parties without the use of third party transit providers." This provision, however, by its plain language refers to situations in which there is a third party transit carrier *between AT&T and Qwest*; the agreement states merely (and unsurprisingly) that in such situations (where AT&T and Qwest are not directly handing off traffic to one another), there is no assumption that AT&T and Qwest have a compensation agreement.

24. The interpretation of the agreement that all parties have observed until now is the only interpretation consistent with both the law and the terms of the agreement. Qwest's current actions are a violation of checklist item one.

II. CHECKLIST ITEM #2: NONDISCRIMINATORY ACCESS TO UNBUNDLED NETWORK ELEMENTS.

25. In Oregon, Qwest denies CLECs information necessary to order unbundled loops in situations in which Qwest has deployed IDLC technology. All of Qwest's SGATs, except for Oregon, contain the following section (§ 9.2.2.2.1.1), which provides that:

> In areas where Qwest has deployed amounts of IDLC that are sufficient to cause reasonable concern about a CLEC's ability to provide service

> through available copper facilities on a broad scale, CLEC shall have the ability to gain access to Qwest information sufficient to provide CLEC with a reasonably complete identification of such facilities. Qwest shall be entitled to mediate access in a manner reasonably related to the need to protect confidentiality or proprietary information. CLEC shall be reasonable for Qwest's incremental cost to provide such information or access mediation.

26. This provision gives CLECs the right to gain access to Qwest information on outside plant facilities such as copper feeder. Copper feeder is necessary in areas where Qwest has predominantly IDLC facilities so that CLECs can provide advanced services such as DSL. Without access to the appropriate data, CLECs will not be able to determine if facilities are available. The Commission has unambiguously held that CLECs are entitled to all available loop qualification information in Qwest's databases or internal records, in the same time intervals that that it is available to any Qwest personnel, regardless of whether Qwest retail personnel have access to such information. Qwest's decision to eliminate this provision from its Oregon SGAT denies CLECs the information to which they are entitled.

27. Qwest's elimination of this provision is all the more troubling because Qwest has entered into secret agreements with a CLEC that provided electronic access to Qwest's Outside Plant Record databases (OSP-FM) – a database that would provide access to information concerning the availability of copper alternatives to Qwest's installed IDLC plant.[7] These agreements apply to the Qwest region and specifically mention Oregon. Indeed, AT&T repeatedly asked Qwest in the Oregon workshops to provide information on spare facilities, and Qwest never indicated that the OSP-FM database would provide such information. Now that

[7] *See* Scindo, Confidential Settlement Agreement, May 4, 2001; Scindo, Confidential Settlement Agreement, August 10, 2001.

these secret agreements have been revealed, it is clear that Qwest understood the relevance of the OSP-FM database. Qwest maintains that AT&T cannot opt into such agreements anymore because the CLEC is now out of business. Qwest's willingness to enter into such an agreement, however, dramatically confirms that it is currently failing to provide full and complete access to loop qualification information.

VERIFICATION PAGE

I declare under penalty of perjury that the foregoing Declaration is true and correct.

/s/ Kenneth L. Wilson
Kenneth L. Wilson

Executed on: February 5, 2003